

Mental Capacity Act and COVID-19 Newsletter



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Imagination and Flexibility in Strange Times

These are certainly strange times that we're in. While Dorset has been more fortunate than some areas of the country, the pandemic has undoubtedly taken its toll on all parts of the Health & Social Care service. As we move from the crisis phase of the Coronavirus pandemic to something resembling a steady state, we see the restrictions on activity and movement relaxed around us – yet COVID-19 is still very much with us and the need to be vigilant remains.

The need to restrict contact between people and yet to minimise the impact on patients, care home residents and people in other settings such as shared lives and supported accommodation of not being able to see their families or friends or go about their usual activities has been an impossible conundrum to solve – and these issues are unlikely to go away any time soon.

This makes decisions about how to manage the impact of lock down on vulnerable people both common place & routine and yet profound & absolutely vital. Sometimes, it is the little things that make all the difference.

We have come across some fabulous examples of interventions that have shown health & care providers at their inventive best.

Our current favourite is where a care home had organised regular Face-Time calls for residents to see & speak to their families and when one woman got upset because, not having family, she didn't have any Face-Time calls, the activities coordinator went upstairs and called her to have a chat.

These regular chats via the screen added to this woman's joy and enhanced her quality of life considerably, and showed the home's attention to her needs and willingness to do something different to make her happy – as well as resulting in a woman who ate better, accepted personal care more readily and was generally more content in the home; all because of an inventive way of making her feel cared for.



The COVID-19 guidance is very clear about the fact that the Mental Capacity Act and Deprivation of Liberty Safeguards are not affected by the pandemic or the emergency legislation that this has needed. The efforts to individualise people's care (through Best Interests decisions if they lack capacity) and to continually look to minimise the restrictions on their freedoms cannot be forgotten – even in the heat of a pandemic – and I'm heartened by those providers that have not fallen back on rigid, blanket policies that don't take account of individual service users' needs (and the needs of their families).

It is this commitment to the wishes, feelings and welfare of those individuals using our services, rather than the enforcing of sterile rules, that makes working in the health and social care sector fulfilling. We have come across numerous examples of the kind of imagination and flexibility that fits entirely with the Mental Capacity Acts ethos of minimising restrictions on people's freedoms and maximising their quality of life. For these we thank you – it's what we'll want when we need your care!

Paul Greening and Sue Farmer

Joint MCA Managers, Dorset Council

Confused about visiting in Care Homes?

Dorset Council have issued guidance to Care Homes in Dorset about how to proceed with visiting.

The lock down period is coming to end and there are easements to restrictions being put into place within the community.

Many people within Care Homes have been unable to see their family and friends for many months which has been deemed necessary to protect them and those around them.

This is in part because many people will be additionally vulnerable, and we know that once COVID-19 breaks out in care home settings it can have devastating consequences in terms of the spread of the disease and mortality rates.

However, the impact of not having family contacts can also have a significant and often negative impact on well being particularly emotional well being and mental health.

For those individuals who are unable to understand why they are no longer seeing the people they love, or where regular visits have maintained attachments and family bonds this can have an impact on their behaviour as well as mental health.

As the rates of infection in the community and in particular Dorset are reducing it is time to re-introduce visiting following the guidance issued both locally and by central Government to minimise the risks introducing infections into care homes or spreading it within the community.



Dorset Council have issued this framework to assess the suitability of visiting for Care Homes:

Local Epidemiology:

- 1) Continued low numbers of positive COVID-19 test results being reported in Bournemouth Christchurch and Poole and Dorset Local Authority areas. This will be based on the number of positive cases in the past 5 days and the Local Authority reports produced by Public Health England.
- 2) Continued low rates in local testing data, including Pillar 1 and 2 testing. This data is reviewed on an ongoing basis with routine weekly updates available on the Public Health Dorset website (see future assessments below).

Context of Care homes:

- 1) Absence of COVID-19 positive cases.
- 2) Absence of suspected cases undergoing and awaiting test results.
- 3) Care home provides regular assurance around availability of workforce, Personal Protective Equipment and completion of Infection Prevention and Control training by completing the national Capacity tracker and/or through discussions with the Quality and Commissioning Teams.
- 4) The care home has a risk assessment for their visitor arrangements which are in line with the national guidance.

5) The care home keeps a temporary list of contact details of visitors in addition to staff and residents to facilitate Test and Trace.

6) The care home follows a good practice approach to regular staff testing and whole home testing, especially in the context of any outbreak.

Due to the current low incidence of COVID-19 in our community and lack of outbreaks within our Local Authority areas, the Director of Public Health, Sam Crowe, indicates that so long as Care homes can fulfil the above criteria, it would be safe to allow care homes to facilitate visits to their residents. This is on the condition that they are able to do this safely in line with the Government guidelines.



All of the links for the guidance will be attached at the end of this but it is important to think about the Mental Capacity Act and how the most vulnerable people are managing during these challenging times. Where a person is lacking capacity to make a decision about their care and accommodation needs then decisions will need to be made in their best interest. Government issued Guidance or the Corona Virus Act 2020 have not replaced or taken away the Mental Capacity Act and any of our actions need to continue to be compliant with both the Mental Capacity Act (including the Deprivation of Liberty Safeguards) and the Human Rights Act.

Homes will have to develop their own protocols for visiting and they will need to keep these agile and under constant review depending on the National and local picture in terms of the rates of infection. However, any protocols that are put in place must also have some degree of flexibility to be able to respond to individual needs and circumstances.

The Mental Capacity Act does allow for individuals to be restricted if its to keep them safe from harm, but it must be both **Proportionate and Necessary** to keep that person safe.

Visiting plans can **not** be applied in a blanket way and will have to reflect the individual needs of residents, homes may have to be creative about how this is done.

The Government issued an ethical framework for adult social care which sets out values and principles which should be considered along side the guidance and professional codes of practice:

RESPECT





Respect - recognising that every person and their human rights and personal choices, safety and dignity matters.

Reasonableness - ensuring that decisions are rational, fair, practical, and grounded in appropriate processes, available evidence and a clear justification.

Minimising Harm - striving to reduce the amount of physical, psychological, social and economic harm that the outbreak might cause to individuals and communities. In turn, this involves ensuring that individual organisations and society as a whole cope with and recover from it to their best ability.

Inclusiveness - ensuring that people are given a fair opportunity to understand situations, be included in decisions that affect them, and offer their views and challenge. In turn, decisions and actions should aim to minimise inequalities as much as possible.

Accountability - holding people, and ourselves, to account for how and which decisions are made. In turn, this requires being transparent about why decisions are made and who is responsible for making and communicating them.

Flexibility - being responsive, able, and willing to adapt when faced with changed or new circumstances. It is vital that this principle is applied to the health and care workforce and wider sector, to facilitate agile and collaborative working.

Proportionality - providing support that is proportional to needs and abilities of people, communities and staff, and the benefits and risks that are identified through decision-making processes.

Community - a commitment to get through the outbreak together by supporting one another and strengthening our communities to the best of our ability.



While there is a huge amount of guidance out there to support the care home sector when making decisions about visiting with their homes it is changing and evolving all the time so these basic principles will be of use to decision makers.

From the Mental Capacity Act Teams teams point of view we have witnessed some very creative ways of enhancing the lives of people who are in care homes and restricted from having access to their loved ones.

There has been lots of use of video messaging, telephone calls, window and garden visits all of which have been really positive. We are going to have to keep looking for ways of improving the ways in which we support people to have access to those they love in as safe a way as possible.

Moving into the Autumn and Winter homes need to think about how else the garden visits could be managed as the weather changes? If the infection rates remain low can contacts be increased? Can people start going out for walks with family or carers?

Certainly, when people are very unwell or reaching end of life reasonable adjustments have to continue to be made.



There are clearly no easy answers for any of us but we must strive to maintain human and family contact for the most vulnerable people who are unable to say for themselves what they wish to happen.

Remember Judge Munby gave us the very famous quote about **what is the point of making someone safe if we merely make them miserable?**

We are likely to be living with this virus for some time to come so we have to find a balance between safe and happy.



Free Virtual Mental Capacity Act, Deprivation of Liberty and Liberty Protection Safeguards Webinars



25/08/2020 - 14:00 - 15:00 - to join click [here](#),

"Mental Capacity Act and Human Rights during the Pandemic"

29/09/2020 - 14:00 - 15:00 - to join click [here](#), topic to be confirmed - let us know if you need a calendar invite

3/11/2020 - 14:00-15:00 - to join click [here](#), topic to be confirmed - let us know if you need a calendar invite

If you need support accessing these events, you will find some helpful information [here](#).

Email mcateam@dorsetcouncil.gov.uk or call 01305 225650 if would like a calendar invite

Mental Capacity Act - the principles



Mental Capacity Act 2005

1. A person must be assumed to have capacity unless it is established that they lack capacity
2. A person is not to be treated as unable to make a decision unless all practicable steps to help them to do so have been taken without success.
3. A person is not to be treated as unable to make decisions merely because they make an unwise one
4. Any act done, or the decision made, under this act, for or on behalf of a person that lacks capacity must be done or made in their best interests.
5. Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

Useful Links and resources



MCA and COVID-19, Frequently Asked Questions

Mental Capacity Act Team
May 2020



1 - <https://www.youtube.com/watch?v=F2cbrlm5hk4&feature=youtu.be>



Does COVID-19 affect the Mental Capacity Act and the Human Rights Act?

The Human Rights Act is still here and so is the The Mental Capacity Act and Deprivation of Liberty Safeguards.

The Coronavirus Act 2020 does not change how we treat people who may lack capacity so don't let your good practice slip.

Assess mental capacity when you have reason to think someone is lacking it.

Best Interest Decisions are based on consultation with the person first then the family, carers, friends, advocates and health and social care professionals. You can do it remotely.

The Court of Protection are working remotely to support easy and quick access when we need them in cases of dispute.

Contact the MCA Team on 01305 225650 for advice

[Dorset Framework for Care Home Visits](#)

[Government updated policy for visiting care homes](#)

[Care Provider Alliance visitors protocol](#)

[Alex Ruck Keene's - Shedinars](#)

Edge animation on the [what we know so far about LPS](#).

The Mental Capacity [Amendment Bill](#)

[SCIE](#)